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July 21, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

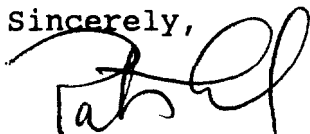
Re: Amendment of Section 73.202(b),
FM Broadcast Stations
(Mt. Juliet and Belle Meade, Tennessee)
MM Docket No. 97-97; RM-9047

Dear Mr. Caton:

Transmitted herewith on behalf of Cromwell Group, Inc. is an original and four copies of its Comments in the above-referenced proceeding.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,



John F. Garziglia
Patricia M. Chuh

Enclosure

cc: Edward W. Hummers, Jr., Esq.
John L. Tierney, Esq.
Mr. David J. Waynick

No. of Copies rec'd
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 21 1997

FILED IN THE
OFFICE OF THE
CLERK OF THE COMMISSION

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 97-97
Table of Allotments) RM-9047
FM Broadcast Stations)
(Mt. Juliet and Belle Meade, Tennessee))

To: Chief, Allocations Branch

COMMENTS

Cromwell Group, Inc., by its attorneys, hereby submits its comments in the above-referenced rule making proceeding, which seeks to change the community of license for Channel 294A from Mt. Juliet, Tennessee to Belle Meade, Tennessee. Because the appropriate remedy for a defective allotment is the deletion of the channel, the Commission should delete Channel 294A from Mt. Juliet, Tennessee and not reassign it as requested. In support whereof, the following is respectfully submitted:

1. The instant rule making proceeding was initiated by a Petition for Rule Making and Request for Modification of Authorization to reallocate Channel 294A from Mt. Juliet, Tennessee to Belle Meade, Tennessee filed by Mt. Juliet Broadcasting, Inc. ("MJB"), the permittee of station WNPL, Channel 294A, Mt. Juliet, Tennessee, on February 21, 1997.^{1/} On March 21, 1997,

^{1/} Also on February 21, 1997, MJB filed an application to modify the construction permit for WNPL(FM), Mt. Juliet Tennessee (BMPH-970221ID) ("Modification Application"). Because MJB's Modification application was filed in direct violation of section 73.203 of the Commission's Rules, among other things, the Cromwell Group, Inc., by its attorneys, filed an Informal Objection pursuant to section 73.3587 of the Commission's Rules on July 16,

the Commission released the Notice of Proposed Rule Making ("NPRM") seeking comment on MJBFI's proposed allotment plan. In its NPRM, the Commission established May 12, 1997 as the deadline for filing comments and May 27, 1997 as the deadline for reply comments.^{2/}

2. Although neither MJBFI nor the parties filing comments addressed or discussed the Commission's controlling authority, the appropriate remedy for a defective allotment is the deletion of the channel. In its Comments and Reply Comments filed in this rule making proceeding, MJBFI asserts that the allotment of Channel 294A to Mt. Juliet, Tennessee is defective due to predicted electromagnetic interference ("EMI") to FAA navigational radio facilities. According to MJBFI, the allotment of Channel 294A to Mt. Juliet cannot be implemented because of this interference and thus, the allotment is technically defective. Comments of MJBFI, MM Docket No. 97-97, May 12, 1997; Reply Comments of MJBFI, MM Docket No. 97-97, May 27, 1997. Similarly, MJBFI also declares in its Modification Application that the allotment of Channel 294A to Mt. Juliet is defective because "it is not possible for WNPL to operate on Channel 294A from any location which will provide the required city grade coverage to Mount Juliet while also eliminating the FAA's concerns regarding EMI." Modification

1997.

^{2/} Concurrently with the filing of these comments, Cromwell Group, Inc. filed a request with the Commission seeking acceptance of these late-filed comments. See Motion for Acceptance of Late-Filed Comments of Cromwell Group, Inc., July 21, 1997.

Application, Section 1.0 of Engineering Statement. If such is indeed the case, the appropriate remedy is the deletion of Channel 294A at Mt. Juliet, Tennessee.

3. Further, and perhaps more importantly, the Commission should not adopt MJBBI's proposed allotment plan because MJBBI accepted the grant of its construction permit for WNPL with full knowledge that the allotment of Channel 294A to Mt. Juliet, Tennessee could create a hazard to air navigation. MJBBI was notified as early as June 27, 1990 that the Mt. Juliet allotment "would cause substantial adverse effects upon air navigation." See FAA Termination of Aeronautical Study of Proposed Construction or Alteration, April 19, 1991, hereto attached as Exhibit No. 1.^{3/} Thereafter, MJBBI filed an amendment to its construction permit application on July 31, 1991. In its amendment, MJBBI expressly stated that it would accept the grant of the WNPL construction permit with the following condition:

Upon receipt of notification from the Federal Communication Commission that harmful interference is being caused by the operation of the licensee's [permittee's] transmitter, the licensee [permittee] shall either immediately reduce the power to the point of no interference, cease operations, or take such immediate corrective action as necessary to eliminate the harmful interference.

See Amendment to application of Jamal Broadcasting, L.P., July 31, 1991 (FCC File No. BPH-891011MJ), hereto attached as Exhibit

^{3/} MJBBI acquired the WNPL permit in the name of Jamal Broadcasting, L.P. as the result of a settlement agreement in a comparative proceeding, MM Docket No. 91-94. Jamal Broadcasting, L.P. subsequently assigned the permit to MJBBI, a corporation owned by Jamal Broadcasting, L.P. (FCC File No. BAPH-960424GG).

No. 2. MJBFI cannot now seek to change the community of license for WNPL based upon Section 1.420(i) of the Commission's Rules, when it accepted its construction permit with the full knowledge that EMI interference would likely result in a technically defective allotment. The Commission should, therefore, delete the defective allotment of Channel 294A at Mt. Juliet, Tennessee.^{4/}

4. The Commission routinely deletes channel allotments when a channel allotment cannot be implemented because there is no technically feasible transmitter site that complies with the Commission's Rules. See e.g., San Clemente, California, 10 FCC Rcd 8291, para. 6 (1995) (deletion of channel appropriate because there is no available fully spaced site in compliance with the Commission's technical allotment requirements)^{5/}; see also Letter from Dennis Williams, Assistant Chief, Audio Services Division, Mass Media Bureau, to ECI License Company, Inc., 11 FCC Rcd 1797, 1800 (1996) (deletion of the substandard allotment is appropriate when a short-spaced transmitter site is necessary before the allotment can be used); Harkers Island, North Carolina, 10 FCC Rcd 13159, para. 3 (1995) (deletion of allotment appropriate

^{4/} If Channel 294A is to be allotted to Belle Meade, Tennessee, fairness demands that the Commission provide an opportunity for interested parties, such as women, minorities, and local residents to file competing applications.

^{5/} There was a site location that would accommodate Channel 285A at San Clemente, California. However, this site was located on the grounds of Camp Pendleton and the U.S. Marine Corps would not approve the construction of a commercial broadcast tower on military property. Thus, the Commission concluded that the allotment of Channel 285A at San Clemente, California no longer served the public interest. 10 FCC Rcd 8291, paras. 2, 6.

when no site complies with the Commission's minimum separation and principal city coverage requirements); Atlantic City, New Jersey, 57 RR 2d 1436, para. 8 (1985) (channel deletion appropriate where allotment of channel was based on specific representation by the petitioner that an offshore transmitter site was available); Pinckneyville, Illinois, 41 RR 2d 69 (1977) (allotment deleted because there was no showing that a transmitter site meeting the Commission's technical requirements was available). Similarly, the defective allotment of Channel 294A to Mt. Juliet, Tennessee should be deleted.

5. Conclusion. For the foregoing reasons, the Commission should delete the allotment of Channel 294A to Mt. Juliet, Tennessee, and deny the requested reallocation.

Respectfully submitted,

THE CROMWELL GROUP, INC.

By:



John F. Garziglia
Patricia M. Chuh
Its Attorneys

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July 21, 1997

US Department
of Transportation
Federal Aviation
Administration

SOUTHERN REGION
ATTN: ASO-532
P. O. BOX 20636
ATLANTA, GEORGIA 30320
404-763-7646

Exhibit No. 1

WASH. FIELD ID
AERONAUTICAL STUDY
No. 89-ASO-2060-01

TERMINATION OF
AERONAUTICAL STUDY OF PROPOSED CONSTRUCTION OR ALTERATION

SPONSOR	Michael Grant 505 Piccadilly Row, #202 Nashville, TN 37013	CONSTRUCTION LOCATION	
		PLACE NAME	
		Nashville, TN	
CONSTRUCTION PROPOSED	DESCRIPTION FM. RADIO ANTENNA TOWER 106.7 MHz; 6 KW ERP	LATITUDE	LONGITUDE
		36°10'30"	86°40'08"
		HEIGHT (FEET)	
		ABOVE GROUND	ABOVE MSL
		73	.848

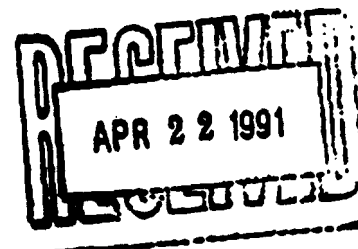
Our June 27, 1990 letter notified you that your proposed construction would cause substantial adverse effects upon air navigation.

The letter stated that the proposal would cause intermodulation interference to aircraft making an instrument landing system (ILS) approach to Runway 32 at Smyrna Airport and Runways 31, 2L, and 20R at Nashville International Airport.

No reply to this notice was received, therefore, the aeronautical study is terminated.

If you desire to reactivate the construction proposal, please use the enclosed FAA Form 7460-1.

cc: FCC
ASO-483
Lechman & Johnson, Inc.



SIGNED Robert L. Shipp, Jr. TITLE Airspace Specialist
ISSUED AT East Point, GA ON April 19, 1991
System Management Branch

AIRPORT MANAGERS - PLEASE POST

COMMENTS INVITED

In re Applications of) MM Docket No. 91-84
)
Grady Lynn and Carol Lynn) File No. BPH-891011MJ
d/b/a Lynn Broadcasting)
)
et al.)
)
For Construction Permit for)
a New FM Station on Channel)
294A, Mt. Juliet, Tennessee)

To: Hon. Edward Kuhlmann, Administrative Law Judge

AMENDMENT

Jamal Broadcasting, L.P. ("Jamal") respectfully amends its application: (1) to report that on July 3, 1991, the FAA issued an air hazard determination for its proposed site, finding that while the site does not exceed the obstruction standards of Federal Aviation Regulations, Part 77, it would have an adverse impact on aircraft based on electromagnetic interference (EMI); and (2) to reconfirm that it will accept the imposition of the following condition upon any grant of its application:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's [permittee's] transmitter, the licensee [permittee] shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

I declare under penalty of perjury under the laws of the United States of America that the representations made in the foregoing "Amendment" are true and correct to the best of my knowledge and belief.

Executed

J. G. 31, 1991

Michael Grant
Michael Grant
General Partner

CERTIFICATE OF SERVICE

I, Denise A. Branson, secretary in the law firm of Tierney & Swift hereby certify that I have sent by first-class mail, postage prepaid this 12th day of May, 1997, copies of the foregoing COMMENTS to the following:

Edward W. Hummers, Jr., Esquire
Holland & Knight LLP
2100 Pennsylvania Avenue, NW
Suite 400
Washington, D.C. 20037-3202
(Counsel for MJB)



Denise A. Branson

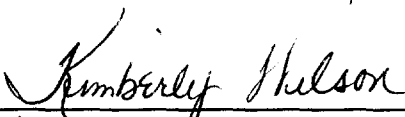
CERTIFICATE OF SERVICE

I, Kimberly Wilson, a secretary in the law firm of Pepper & Corazzini, L.L.P., certify that the foregoing Comments were mailed on this 21st day of July, 1997 to the following by first class mail, postage prepaid.

Edward W. Hummers, Jr., Esq.
Holland & Knight
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Washington, D.C. 20037
Counsel for Great Southern Broadcasting Co., Inc.

Mr. David J. Waynick
Mayor of Mt. Juliet
City Hall
2425 Mt. Juliet Road
Mt. Juliet, TN 37122



Kimberly Wilson